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LEGISLATION

NEW YORK CITY UNDER PERMANENT PERSONAL REGISTRATION

Introduction

"The consent of the governed is manifested through the ballot box."¹ The privilege of voting, however, is conferred only on those who meet the specified qualifications laid down by the state. Common among these qualifications² are citizenship, residence, age, and the ability to pass a literacy test. Thus, in every state, the elective franchise inheres only in those persons born or naturalized in the United States.³ In addition, in a vast majority of the states, the voter must be a resident, twenty-one years of age.⁴ Residence, as a voting requirement, is defined as "... that place where one's home or domicile is fixed and where one intends to live."⁵ Thus, the requirement that a voter be a resident connotes the concept that his voting address be his permanent rather than his temporary address. In addition, eighteen states either require their citizens to read English, to write it, or both, to qualify as a voter.⁶

Running concurrently with the power to determine those who may vote is the state's power to determine who may not vote. Though a person is an adult resident citizen who has passed the literacy test required by law, he may, nevertheless, be disqualified. Thus, depending on the state of residence, disqualification may result from pauperism, insanity, or conviction of a felony.⁷

The general policy inherent in determining who is qualified to vote is effectuated by some administrative machinery set up by the state. This administrative machinery, in most instances, takes the form of a registration system. The main purpose of registration is to prepare a list of names of those persons who meet the voting requirements and who are not otherwise disqualified.⁸ Another function of

¹ ABRAHAMS, NEW YORK ELECTION LAW MANUAL 1 (1939).

² See BERNARD, ELECTION LAWS 9-12 (1950); KEY, POLITICS, PARTIES, AND PRESSURE GROUPS 621-28 (3d ed. 1952).

³ See GRAVES, AMERICAN STATE GOVERNMENT 105 (4th ed. 1953); KEY, *op. cit. supra* note 2, at 626.

⁴ See BERNARD, *op. cit. supra* note 2, at 10; GRAVES, *op. cit. supra* note 3.

⁵ BERNARD, *op. cit. supra* note 2, at 10; see also JACOBS, POLITICAL PARTIES 96 (1951).

⁶ See KEY, POLITICS, PARTIES, AND PRESSURE GROUPS 626 (3d ed. 1952).

⁷ See BERNARD, ELECTION LAWS 12 (1950).

⁸ See GRAVES, AMERICAN STATE GOVERNMENT 116 (4th ed. 1953); KEY, *op. cit. supra* note 6, at 631.

registration is to provide an opportunity to investigate the qualifications of those claiming eligibility to vote.⁹ A third reason for the requirement of registration is to identify the voter at the polls.¹⁰ It has been held, however, that registration does not constitute an additional suffrage qualification, but is a reasonable regulation thereof.¹¹

The first registration law for voters was passed by Massachusetts in 1800.¹² Today, registration provisions are found in the constitutions and statutes of forty-six states.¹³ In Arkansas, registration is prohibited by the state constitution¹⁴ and in Texas the state constitution prohibits registration except in cities having a population of 10,000 or more.¹⁵ In these two latter states, a poll tax receipt is required as a substitute for registration.¹⁶ Generally, registration is comprehensive; that is, it applies to all elections. It is partial in some states, however, applying only to county and state elections and not to municipal, primary, judicial, or special elections. At the other extreme, some states maintain a dual registration system in which separate registration is required for different types of elections.¹⁷

The constitutionality of reasonable registration laws is well settled.¹⁸ Where the period of time between the closing of registration and election day exceeds the minimum residence requirement, however, some states have held the laws unconstitutional.¹⁹ Other states have held registration laws invalid on the ground that a person may not be deprived of his constitutional franchise, which is in effect on election day, by any compulsory requirement that he register beforehand.²⁰ As a general rule though, compulsory prior registration has been upheld where a reasonable opportunity to register is afforded to the voter.²¹ Furthermore, legislative power to classify cities, for the purpose of providing registration laws, has been held unimpaired by a

⁹ See GRAVES, *op. cit. supra* note 8; Horlacher, *The Administration of Permanent Registration in Philadelphia*, 37 AM. POL. SCI. REV. 829, 830 (1943); National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45, 49 (1927).

¹⁰ See MACDONALD, STATE AND LOCAL GOVERNMENT IN THE UNITED STATES 299 (1955); National Municipal League, *supra* note 9.

¹¹ *Capen v. Foster*, 29 Mass. (12 Pick.) *485 (1832).

¹² See Weeks, *Permanent Registration of Voters in the United States*, 14 TEMP. L.Q. 74 (1939).

¹³ See BERNARD, ELECTION LAWS 17 (1950).

¹⁴ ARK. CONST. art. 3, § 2.

¹⁵ TEX. CONST. art. 6, § 4.

¹⁶ See National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45, 50-51 (1927).

¹⁷ *Id.* at 51.

¹⁸ See note 21 *infra*.

¹⁹ *City of Owensboro v. Hickman*, 90 Ky. 629, 14 S.W. 688 (1890); *Attorney General v. Detroit*, 78 Mich. 545, 44 N.W. 388 (1889); *Page v. Allen*, 58 Pa. 338 (1868).

²⁰ See *White v. Multnomah County*, 13 Ore. 317, 10 Pac. 484 (1886); *Dells v. Kennedy*, 49 Wis. 555, 6 N.W. 246 (1880).

²¹ See *People v. Hoffman*, 116 Ill. 587, 5 N.E. 596 (1886); *State v. Butts*, 31 Kan. 537, 2 Pac. 618 (1884).

constitutional provision that election laws must be "general."²² Of course, very few election laws can be said to be valid per se in all states, since their constitutionality depends upon varying state constitutional provisions.

For the purpose of study, registration systems have been classified into three main categories.²³ Registration may be either compulsory or noncompulsory, personal or nonpersonal, and periodic or permanent. Under a compulsory registration system, it is required that a person's name appear on the registers on the day of election, or he will not be permitted to vote. On the other hand, a system becomes noncompulsory where provision is made for "swearing in" the voter at the polls.²⁴ "Swearing in" provisions permit the voter, on the day of election, to submit an affidavit that he possesses the necessary voting qualifications, though he has not previously registered. This affidavit, however, must be supported by witnesses.²⁵

The term "personal registration" is self-explanatory, and implies that the elector must apply personally to have his name placed on the registration lists. Under a nonpersonal registration system, the lists of qualified voters are prepared by the registration board from either its own knowledge or other information at its disposal. The elector is not required to appear personally.²⁶

The third category (periodic or permanent) mentioned above represents, perhaps, the most important aspect of any registration system; that is, the duration of the effectiveness of the registration. A periodic system of registration requires qualified electors to register anew at specified intervals. It is a decentralized system of precinct registration, wherein only a few days are set aside in any year when registration is required for the enrollment of electors.²⁷ Conversely, permanent registration is a system of centralized registration whereby a person, once registered, remains registered for life unless he changes his voting residence, changes his name, or is otherwise disqualified.²⁸ If the voter, under such a system, is required to register personally, the system is known as permanent personal registration.²⁹

The development of modern registration systems in this country is a product of social, economic, political, and geographical changes in the makeup of our society. In the early days, when our country was

²² See *People v. Gordon*, 274 Ill. 462, 113 N.E. 864 (1916).

²³ See KEY, *POLITICS, PARTIES, AND PRESSURE GROUPS* 632-36 (3d ed. 1952).

²⁴ *Id.* at 635; see also GRAVES, *AMERICAN STATE GOVERNMENT* 118 (4th ed. 1953).

²⁵ See KEY, *op. cit. supra* note 23, at 635-36.

²⁶ See Schenectady Bureau of Municipal Research, *Research Brevities*, Feb. 20, 1952.

²⁷ See Weeks, *Permanent Registration of Voters in the United States*, 14 *TEMP. L.Q.* 74 (1939).

²⁸ See RAY, *REPORT TO GOVERNOR THOMAS E. DEWEY ON PERMANENT PERSONAL REGISTRATION OF ELECTORS* 7 (1952). This Report will hereafter be referred to as: *REPORT ON PERMANENT PERSONAL REGISTRATION*.

²⁹ *Ibid.*

predominantly rural, voters were nearly always known to their neighbors, some of whom were the election officials at the polls. These officials usually had personal knowledge of a voter's qualifications. Hence, there was little need for registration. With the development of an urban society, a need for formality in determining the persons entitled to vote became apparent. The early registration laws were, generally, inconvenient for the voter and did not provide adequate machinery for preventing fraud.³⁰ As mentioned above, election officials were given the task of purging the lists of those no longer qualified to vote from their own personal knowledge. Thus, in some cases, the registration laws served to stimulate fraud rather than prevent it.³¹ The trend today is toward the adoption of permanent systems of registration,³² as evidenced by the fact that, in varying degrees, forty-two states have made provision for such a system.³³ In thirty-one of these states, permanent registration has been adopted on a statewide basis,³⁴ while in the remaining eleven, the system applies only in certain parts of the state,³⁵ or is optional.³⁶ This trend has resulted in large measure, from the zealous efforts of certain civic groups, such as the National Municipal League and the League of Women Voters. In 1927, a committee of the National Municipal League drafted *A Model Registration System*.³⁷ The Model System is a permanent³⁸ personal³⁹ registration system of statewide⁴⁰ application. It is considered essential to the efficacy of such a system that adequate provision be made to purge the registration lists of names of persons no longer qualified to vote. Thus, various specifications are recommended designed to remove "dead weight" from the registers.⁴¹ Among the more important of these specifications are provisions requiring an annual house-to-house canvass or census of all adult residents⁴² and a mail check of registered voters.⁴³ In addition, the Model provides for the cancellation of an elector's registration in the

³⁰ *Id.* at 8; Weeks, *Permanent Registration of Voters in the United States*, 14 TEMP. L.Q. 74 (1939).

³¹ See RAY, *op. cit. supra* note 28, at 8.

³² See GRAVES, *AMERICAN STATE GOVERNMENT* 117 (4th ed. 1953); MACDONALD, *STATE AND LOCAL GOVERNMENT IN THE UNITED STATES* 301 (1955).

³³ See Schenectady Bureau of Municipal Research, *Research Brevities*, Feb. 20, 1952. New York adopted permanent registration in 1954. *Laws of N.Y.* 1954, c. 531-32.

³⁴ See Schenectady Bureau of Municipal Research, *supra* note 33.

³⁵ *Ibid.*

³⁶ N.Y. ELECTION LAW § 350.

³⁷ See National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45 (1927).

³⁸ *Id.* at 63.

³⁹ *Id.* at 75.

⁴⁰ *Id.* at 62.

⁴¹ *Id.* at 77-83.

⁴² *Id.* at 79.

⁴³ *Id.* at 81.

event he moves outside the registration office's jurisdiction,⁴⁴ changes his name,⁴⁵ or fails to vote within a specified period not exceeding two years.⁴⁶ Since its publication in 1927, the specifications contained in the Model Registration System have, in varying degrees, been adopted by many states.⁴⁷ The draftsmen of the Model System believed that it would prove more convenient for the voters, less expensive to the public and more effective in preventing fraud.⁴⁸ A study of the experience of those jurisdictions which have substantially adopted its provisions, seems to substantiate this prediction.⁴⁹ It is perhaps this experience which has led to the adoption of this type of legislation in New York State⁵⁰ and more recently in New York City.⁵¹

History of Permanent Personal Registration in New York

Prior to 1938, the Constitution of New York contained no provision authorizing a system of permanent personal registration. The Constitution provided only that registration was to be personal in those cities and villages having 5,000 inhabitants or more.⁵² The same provision seemed to exempt the inhabitants of cities and villages of less than 5,000 population from any system of personal registration.⁵³ Both these provisions were readopted into the present Constitution.⁵⁴

In 1938, the Constitution was amended to permit the Legislature to adopt a system of permanent personal registration.⁵⁵ It was not until 1954, however, that the Legislature enacted an optional permanent personal registration statute.⁵⁶ This was the result of the extensive work of the Joint Legislative Committee to Study the Election Law and various civic groups.⁵⁷ In 1954 Nassau⁵⁸ and Broome⁵⁹

⁴⁴ *Id.* at 84.

⁴⁵ *Id.* at 86.

⁴⁶ *Id.* at 78-79.

⁴⁷ See RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 11 (1952).

⁴⁸ National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45, 63 (1927).

⁴⁹ See RAY, *op. cit. supra* note 47, at 31-55.

⁵⁰ Laws of N.Y. 1954, c. 531-32.

⁵¹ N.Y.C. LOCAL LAW No. 80 (1956). This law will become new chapter 50 of the N.Y.C. Charter.

⁵² N.Y. CONST. art. 2, § 4 (1894).

⁵³ *Ibid.*

⁵⁴ N.Y. CONST. art. 2, § 5.

⁵⁵ *Id.* § 6.

⁵⁶ Laws of N.Y. 1954, c. 531-32.

⁵⁷ 1956 LEG. DOC. No. 48, REPORT, JOINT LEGISLATIVE COMMITTEE TO MAKE A STUDY OF THE ELECTION LAW AND RELATED STATUTES 21 (1956); Governor Thomas E. Dewey, Memorandum to the Legislature, MCKINNEY'S SESSION LAWS OF NEW YORK 1399 (1954).

⁵⁸ 1954 LOCAL LAWS, Nassau County No. 7.

⁵⁹ *Id.*, Broome County No. 4.

Counties adopted permanent personal registration. Schenectady County adopted the system in 1955.⁶⁰

Permanent personal registration was first recommended for New York City in 1937.⁶¹ However, prior to 1954 the City was powerless to adopt such a system without legislative authorization. After the passage of the optional statute in 1954, Mayor Wagner and other city leaders desired to adopt permanent personal registration if certain amendments could be made.⁶² Governor Harriman specifically asked that the system be placed on a mandatory basis; that the cumbersome and expensive provisions of the optional law be removed, and that the requirement of a house-to-house canvass be eliminated.⁶³ Though these recommendations failed to become law,⁶⁴ New York City nevertheless adopted the optional statute in December 1956.⁶⁵ The Governor, in his annual message to the Legislature this year, renewed his previous recommendations⁶⁶ and to date a number of bills have been introduced to carry them out.⁶⁷

Under the present law New York City or any county outside the city is authorized to adopt permanent personal registration (PPR) by local law.⁶⁸ Proposals have been suggested which would expand the scope of this provision. One of these proposals would allow any city to adopt the law.⁶⁹ More significant, however, are various plans which would make the adoption of PPR by all counties mandatory.⁷⁰ This recommendation would conform to that in the Model System and that of the Governor of New York.⁷¹ As noted above, however, the New York Constitution seems to imply that the inhabitants of towns and villages under 5,000 population are not required to register on a

⁶⁰ See 1956 LEG. DOC. NO. 48, *op. cit. supra* note 57.

⁶¹ See Statement of League of Women Voters of N.Y.C. by Mrs. John Torpey at a Public Hearing before the Board of Estimate on Amending the Charter to Allow Installation of PPR, Dec. 13, 1956.

⁶² See Governor Averill Harriman, Memorandum to Legislature No. 180, April 18, 1956, MCKINNEY'S SESSION LAWS OF NEW YORK 1757 (1956); 1956 LEG. DOC. NO. 48, MINORITY REPORT, JOINT LEGISLATIVE COMMITTEE TO MAKE A STUDY OF THE ELECTION LAW AND RELATED STATUTES 69 (1956).

⁶³ See Governor Averill Harriman, Annual Message to the Legislature, January 4, 1956, MCKINNEY'S SESSION LAWS OF NEW YORK 1524-25 (1956).

⁶⁴ See Governor Averill Harriman, Annual Message to the Legislature, January 9, 1957, MCKINNEY'S SESSION LAWS OF NEW YORK A-113, A-139 (1957).

⁶⁵ N.Y.C. LOCAL LAW NO. 80 (1956). This law will become new chapter 50 of the N.Y.C. Charter.

⁶⁶ See Governor Averill Harriman, *supra* note 64.

⁶⁷ See notes 69, 70, 77, 78, 79, 83 *infra*.

⁶⁸ N.Y. ELECTION LAW § 350. Permanent personal registration will hereinafter be referred to as PPR.

⁶⁹ A. Int. No. 1085; S. Int. No. 1013.

⁷⁰ A. Int. No. 15. This bill has 1960 as the effective date. A. Int. No. 523 has 1958 as the effective date while its counterpart in the Senate, S. Int. No. 382, has 1961 as the effective date.

⁷¹ See notes 40, 63, 64 *supra*.

personal basis.⁷² Thus, it would seem that a mandatory system would meet serious constitutional objections unless the Constitution is amended at the same time.

The present law requires the Board of Elections to perform a number of tasks to purge the lists of "dead wood" as a guard against fraudulent practices. Thus, the Board in each district, in the second year after the adoption of PPR, and every second year thereafter, must employ two election officers to make a personal check on all registrants.⁷³ In addition, each year prior to local registration, the Board must execute a mail check with return postage guaranteed.⁷⁴ If the communication is returned undelivered, this is a ground for the cancellation of a person's registration.⁷⁵ However, the statute further provides that any person whose registration has been cancelled must be so notified.⁷⁶ Various proposals have been advanced which would affect both these provisions. One such proposal would repeal the provision requiring a personal check on registration.⁷⁷ A second would make the biennial mandatory personal check optional, except that the check would have to be performed if such were requested by any member of the Board of Elections.⁷⁸ A more drastic proposal would amend both the personal and mail check provisions by dispensing with the necessity of performing both tasks in any year and allowing the Board to conduct either one in its discretion.⁷⁹ It is felt that these proposals would simplify procedure and eliminate the unnecessary expense which formed the basis of the Governor's objection in his recent annual message.⁸⁰

Another provision of the present law provides that the Board shall cancel the registration of all electors registered under PPR who did not vote at least once within the preceding two years.⁸¹ But the Board must notify such person of the cancellation of his registration, and he may, if he so desires, register anew.⁸² Another series of proposed amendments would extend this two year non-voting license to a four year period.⁸³ While this extension would provide additional convenience to the voter, reduce administrative costs and lessen the registration officers' burden of purging the list, its adoption would appear to be ill-advised. The experience of Philadelphia under a similar provision showed that the lists became unwieldy and efficient ad-

⁷² N.Y. CONST. art. 2, § 5.

⁷³ N.Y. ELECTION LAW § 392.

⁷⁴ *Id.* § 394(2).

⁷⁵ *Id.* § 394(3).

⁷⁶ *Id.* § 406(4).

⁷⁷ A. Int. No. 721; S. Int. No. 490.

⁷⁸ A. Int. No. 710; S. Int. No. 481.

⁷⁹ A. Int. No. 1084; S. Int. No. 1017.

⁸⁰ See note 64 *supra*.

⁸¹ N.Y. ELECTION LAW § 405.

⁸² *Id.* §§ 405, 406(4).

⁸³ A. Int. No. 15; A. Int. No. 1083. S. Int. No. 1015; A. Int. No. 16.

ministration was impossible.⁸⁴ The main purpose of the cancellation of registration for non-voting provision is to clear the lists of "dead weight" not discovered through the other checks under the system. Thus, it would seem that the lengthening of the permissive non-voting period would unnecessarily prolong the removal of the names of unqualified persons on the list.

The present New York PPR statute, with the exception of its optional feature conforms favorably with the specifications incorporated in the Model System. The provisions presently under attack are included in that system and on this basis would seem to warrant retention. A more important consideration, however, is that, regardless of any changes in the statute, New York City will, beginning in the year 1957, operate under a system of permanent personal registration. In predicting the success of PPR in this great metropolis it may be helpful to note the experience of other large cities which have for a number of years registered their electors under this system.

Evaluation of a Permanent Personal Registration System

Authorities in the field of registration and election laws have generally agreed upon four criteria in evaluating the effectiveness of a registration system. Thus, in considering the value of permanent personal registration, special attention will be directed to its convenience to the voter; its cost of operation; its effectiveness in preventing fraudulent voting; and its ability to increase voter participation.

There seems to be little doubt that PPR is more convenient for the voter than other registration systems.⁸⁵ In the first place, an elector, once registered, remains registered for life, unless he moves outside the jurisdiction, changes his name, or is otherwise disqualified. Under a periodic system he is required to register anew at regular intervals. Furthermore, under PPR, registration is conducted throughout the year (except for a short period before elections) rather than only for a few days as is the case under a periodic system. The mild inconvenience involved in being required to register at a central office rather than in the precinct is negligible when considered in the light of the perpetual feature of the system. This problem is further alleviated by the retention of precinct registration on a limited basis under PPR. In New York City a sharp contrast will be presented to the voters under PPR since prior to its adoption there, the

⁸⁴ See Horlacher, *The Administration of Permanent Registration in Philadelphia*, 37 AM. POL. SCI. REV. 829, 831 (1943); RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 29, 41 (1952).

⁸⁵ See Harris, *Registration For Voting in Milwaukee*, 14 NAT'L MUNIC. REV. 603 (1925); National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45, 63 (1927); RAY, *op. cit. supra* note 84, at 53; see also Pollack, *How Crooks Steal Your Vote*, Reader's Digest, Sept., 1956, pp. 49, 52.

City, by state law, operated under the only annual registration system in the country.⁸⁶ Since it has been estimated that at least 80 per cent of the electors in New York City do not change their residences from year to year,⁸⁷ it may readily be seen that a vast majority of its voters will be required to reregister less often under PPR.

In considering costs of permanent registration attention must be directed to initial costs as well as operating costs. The initial costs of installing PPR are generally high⁸⁸ because of the necessity of purchasing new equipment, increases in the permanent staff, and the necessity of increasing election precincts because of increased registrations. In New York State, initial costs in Nassau and Broome Counties which were the first to adopt PPR were relatively high.⁸⁹ In New York City it has been estimated that the original costs should not exceed an additional \$3,000,000 over the present costs of operation.⁹⁰ In 1952, Mr. David B. Costuma in a brief submitted in opposition to proposed PPR legislation concluded that the system would cost New York City \$10,605,671.40 in the first year as compared to the then annual budget of \$2,756,896.⁹¹ A few years before this, the League of Women Voters had made a survey of costs and had estimated the initial costs at \$1,398,436 at a time when the annual budget was approximately \$1,364,865.⁹² The reason for this wide disparity in the estimated first-year costs is partly explained by pointing out that included in Mr. Costuma's estimate is \$4,000,000 for 4000 new voting machines and \$288,000 for 4000 additional polling places.⁹³ The assumption that PPR would necessitate such a large increase in election districts is considered to be unfounded.⁹⁴

The most informative study on operating costs of PPR has been made by Dr. Robert F. Ray in his report to Governor Dewey in 1952.⁹⁵ Dr. Ray compiled data on comparative costs under the periodic system and PPR in several large cities. The cities studied were Chicago, Los Angeles, San Francisco, Detroit, Philadelphia,

⁸⁶ See GRAVES, *AMERICAN STATE GOVERNMENT* 117 (4th ed. 1953); RAY, *op. cit. supra* note 84, at 12.

⁸⁷ See RAY, *op. cit. supra* note 84, at 53.

⁸⁸ See RAY, *REPORT ON PERMANENT PERSONAL REGISTRATION* 30 (1952).

⁸⁹ See 1956 LEG. DOC. NO. 48, *REPORT, JOINT LEGISLATIVE COMMITTEE TO MAKE A STUDY OF THE ELECTION LAW AND RELATED STATUTES* 62-65 (Appendix D 1956). The initial costs in Nassau County were \$217,541.46 for equipment; \$417,327.00 for salaries and rents and \$69,910.03 for additional help, for a total cost of \$704,778.49. In Broome County, first year costs amounted to \$33,326.92 for equipment and \$13,367.75 for salaries, for a total cost of \$46,694.67. Nassau County has 619 election districts. This means that in the 1st year PPR cost \$1,122.42 per district. *Ibid.*

⁹⁰ See RAY, *op. cit. supra* note 88, at 38.

⁹¹ See *ELECTION REFORM COMMITTEE, THE CASE FOR PERMANENT PERSONAL REGISTRATION* 18 (1952).

⁹² *Id.* at 20.

⁹³ *Id.* at 19.

⁹⁴ See RAY, *REPORT ON PERMANENT PERSONAL REGISTRATION* 35, 38 (1952).

⁹⁵ *Id.* at 31-39.

Cleveland and Boston. The following data is based on Dr. Ray's survey.

Chicago adopted PPR in 1936.⁹⁶ The city's registration costs were studied by comparing the present costs with those in a fourteen-year period under the periodic system.⁹⁷ It was found that average yearly costs per precinct declined from \$596.41 under periodic to \$435.36 under the present system. The results per registrant are equally favorable to PPR, there being a drop from \$1.32 to \$.85.⁹⁸

Los Angeles adopted PPR in 1932.⁹⁹ Since that time, it has experienced a phenomenal growth in population.¹⁰⁰ Though the average annual cost per precinct in a nine-year period under the periodic system was \$117.07 and has risen to \$128.51 under permanent registration, the average yearly cost per registrant has declined from \$.394 to \$.389.¹⁰¹ However, election officials there estimate that it would cost five times more to operate a periodic system for the present large and growing population.¹⁰²

San Francisco also adopted PPR in 1932.¹⁰³ There, present cost figures were compared with an eleven-year period under the periodic system.¹⁰⁴ It was found that the average annual costs per precinct under periodic which was \$435.47 has been reduced to \$276.49 under PPR. Per registrant, the annual average has declined from \$1.70 to \$.88.¹⁰⁵ The most phenomenal aspect of the San Francisco figures, however, is that the average total cost per year has been reduced from \$394,971.00 to \$309,950.00 with an increase of over 100,000 registrants.¹⁰⁶ San Francisco officials agree with those in Los Angeles that the periodic system would presently cost at least five times as much to maintain as PPR.¹⁰⁷

Detroit also changed over to PPR in 1932.¹⁰⁸ The present costs in this city were compared with those in a six-year period under a periodic system.¹⁰⁹ Average yearly precinct costs have dropped from \$605.14 to \$514.47 under the present system. Similarly, the average cost per registrant is now only \$.803 as compared to \$.996 under the periodic system.¹¹⁰

⁹⁶ *Id.* at 20 (Chart B).

⁹⁷ *Id.* at 33.

⁹⁸ *Ibid.*

⁹⁹ *Id.* at 20 (Chart B).

¹⁰⁰ *Id.* at 33.

¹⁰¹ *Ibid.*

¹⁰² *Id.* at 34.

¹⁰³ *Id.* at 20 (Chart B).

¹⁰⁴ *Id.* at 34.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Id.* at 20 (Chart B).

¹⁰⁹ *Id.* at 35.

¹¹⁰ *Ibid.*

In Philadelphia, PPR was adopted in 1937.¹¹¹ Here a fifteen-year period under the periodic system was used as a comparison with the present costs.¹¹² The results in regard to average annual cost per registrant compare favorably with those in other cities; a decline from \$.562 under periodic to \$.393 under the permanent system was affected.¹¹³ Because the average number of precincts has *decreased* slightly¹¹⁴ while average total cost has increased,¹¹⁵ however, the average annual cost per precinct has increased, \$230.34 to \$294.45.¹¹⁶ It should be noted that in Philadelphia registration and elections are administered separately by two different agencies. Thus, the above costs represent expenditures only for registration tasks and would be considerably higher if figured on the same basis as the other cities.¹¹⁷

For various reasons there are no comparative cost figures available for Cleveland and Boston. Cleveland has operated under PPR since 1930,¹¹⁸ while in Boston the present permanent system dates back to 1896. Even before that, however, Boston operated a permanent registration system.¹¹⁹ In a ten-year period in Cleveland PPR cost was \$1.08 per registrant per year while yearly costs per precinct have averaged \$439.54.¹²⁰ The Boston survey covers a sixteen-year period in which the average yearly cost was \$.486 per registrant and \$758.08 per precinct.¹²¹

It would appear then, that in terms of costs per registrant and per precinct PPR has proved a more economical system in the cities studied by Dr. Ray. Nevertheless, at \$.76 per registrant per year¹²² the New York City average cost under the annual system compares favorably with the cities studied in the Report.¹²³ However, it would seem that New York City could further reduce costs under PPR, since a change from a similar annual system in Philadelphia has proved financially successful.¹²⁴

Among the common voting frauds are "gangs" of repeaters, colonization, impersonation, floaters and "phantom" voting.¹²⁵ It is

¹¹¹ See Horlacher, *The Administration of Permanent Registration in Philadelphia*, 37 AM. POL. SCI. REV. 829 (1943).

¹¹² See RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 35 (1952).

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Id.* at 36.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Id.* at 20 (Chart B).

¹¹⁹ See Harris, *The Permanent Registration System of Boston*, 15 NAT'L MUNIC. REV. 537 (1926).

¹²⁰ See RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 36 (1952).

¹²¹ *Ibid.*

¹²² *Id.* at 37 (Chart H).

¹²³ See text at notes 98, 101, 105, 110, 113, 120, 121 *supra*.

¹²⁴ See RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 39 (1952).

¹²⁵ See MACDONALD, STATE AND LOCAL GOVERNMENT IN THE UNITED STATES 299-300 (1955); National Municipal League, *A Model Registration System*, 16 NAT'L MUNIC. REV. 45, 48-49 (1927); RAY, *op. cit. supra* note 124, at 49;

generally conceded that PPR provides more effective safeguards for preventing these frauds.¹²⁶ This results largely from the fact that a permanent registration system provides an opportunity for checking the lists throughout the year rather than only in that period between the close of registration and the date of elections as is the case under a periodic system. In New York City, under the annual system, any purging of the lists was required to be done in a thirty-day period.¹²⁷ Election officials in most of the cities studied in the Ray report, agree that, though the system is not perfect in preventing fraud, it has proved more successful in this respect than the periodic system.¹²⁸

Voter participation in elections is effected by many other factors in addition to the registration system. Responsible also for voter apathy are the nature of election, the nature of the candidates and the issues to be decided. The conclusion has been reached that PPR does not increase voter participation.¹²⁹ This conclusion is based on figures comparing the two systems in regard to the average percentage of *registered* persons who actually vote.¹³⁰ It is submitted¹³¹ that

see also Pollack, *How Crooks Steal Your Vote*, Reader's Digest, Sept., 1956, p. 49.

¹²⁶ See Harris, *Registration for Voting in Milwaukee*, 14 NAT'L MUNIC. REV. 603 (1925); National Municipal League, *supra* note 125, at 63; RAY, *op. cit. supra* note 124.

¹²⁷ See RAY, *op. cit. supra* note 124, at 40.

¹²⁸ See RAY, REPORT ON PERMANENT PERSONAL REGISTRATION 49 (1952).

¹²⁹ *Id.* at 59.

¹³⁰ *Id.* at 52.

¹³¹ A true picture of the effect of a permanent registration system on voter participation can only be gleaned by compiling comparative statistics on the average percentage of qualified electors who actually vote under both systems, making allowances for the type of election, possible increases in population, changes in the election laws affecting the qualifications for voting, and the amount of "dead wood" on the registration lists under PPR arising from deaths, removals or other disqualifications. It seems only natural that the percentage of *registered* voters who actually vote under PPR will be smaller than under the periodic system, owing to the increase in the number of registered voters. However, this does not establish the fact that PPR does not increase voter participation. It would seem that the important factor to be determined is to what extent PPR increases the number of registrants since, in most jurisdictions, a person is not entitled to vote unless he has registered. If the increase in the number of persons registered and thus, eligible to vote, is substantial under PPR, then, a large number of additional voters may quite possibly come from the number representing the increase in registrations since the turnover to PPR. In this connection, it is important also that extensive studies be made regarding the reasons why people have not voted, with a view to determining the percentage of non-voters who do not vote because they failed to register. Unfortunately, no statistics based on this data have been compiled. Without such statistics, the effect of PPR on voter participation may not properly be judged. In theory, at least, one cannot escape the conclusion that PPR will bring forth a larger vote represented by that segment of the public whose only reason for not voting under the periodic system was their neglect to register. In fairness, however, it should be mentioned that there is at least one impediment to the conclusiveness of this reasoning. This impediment is represented by the argument that a periodic registration system serves as a reminder

voter participation cannot properly be judged by the use of this method. It would seem that PPR does increase voter participation for two reasons. Since the number of registered persons is substantially larger under PPR, a situation is presented in which a substantially larger portion of the population is eligible to vote on election day. In addition, the provision requiring registrants⁴ to vote at least once in two or four years, which is included in most permanent systems, serves as an added stimulus to voting.

Conclusion

The results of various studies and the experience of other cities show that PPR is more convenient for the voter, is less expensive and provides more effective safeguards for preventing fraud. In theory, at least, PPR does increase voter participation. There is, of course, a human element in any registration system, so the success of PPR depends, in large measure, upon the persons who administer it.¹³²

It is generally conceded that the former system of annual registration which prevailed in New York City was a more highly developed periodic system than any other periodic system now or previously existing in the country. As a result, the City of New York, which has the largest individual vote in a national election, will provide PPR with its severest test. If it can work there effectively, it should be able to work anywhere. Nevertheless, the experience of other large cities indicates that a PPR system will effectively operate in New York City with a minimum of change in the present statute.

The proposed change to make the present statute mandatory throughout the state represents a specification included in the Model System and would seem desirable. There would seem to be, however, a constitutional limitation. It is suggested that the delegates to the anticipated Constitutional Convention of 1959 should consider the repeal of this constitutional provision. Furthermore, repeal or curtailing of the provisions dealing with the house-to-house canvass and a

to vote, apprising the public of an approaching election and thus, brings more people to the polls on election day. But, it would seem that this argument has little merit when one considers the publicity value of modern communication media such as newspapers, radio, television, etc., in making known to a large number of people the fact and particulars of an approaching election. It is not a permanent registration system which will keep people ignorant of an election and their right to participate in it, but the extent of publicity the election receives through the various media of communication. See Hard, *Register! Inform Yourself! Vote!*, Reader's Digest, Aug., 1956, p. 22.

¹³² "... Philadelphia's experience with permanent registration indicates that a system incorporating the main devices laid down as necessary mechanisms for the successful operation of such registration may be undermined by administrative deficiencies not at all inherent in the technical set-up." Horlacher, *The Administration of Permanent Registration in Philadelphia*, 37 AM. POL. SCI. REV. 829 (1943). See also Weeks, *Permanent Registration of Voters in the United States*, 14 TEMP. L.Q. 74, 87 (1939).

mail check would seem unwise. Many of the authorities have specifically recommended that *both* these provisions be included, especially in the case of large cities. Many large cities which have adopted PPR have found it necessary to retain these provisions. Furthermore, it is generally conceded that the success of PPR depends, in large measure, on the inclusion of provisions which insure purging the lists of "dead wood." It is contended that the better course would be to leave these provisions in the statute, at least until PPR has had a sufficient test in New York City. Increasing from two to four years the period in which a person must vote to remain on the register is especially undesirable. As pointed out, this provision tends to increase voter participation. Its effectiveness in this regard would, of course, decrease with a lengthening of the permissible non-voting period. The experience in Philadelphia under a four-year period showed a marked increase in the amount of dead wood on the registers. Regardless of whether these proposals are enacted into law, however, the resulting registration law should prove a superior and more workable solution to New York State's registration problems.



APPORTIONMENT OF THE NEW YORK STATE SENATE

Introduction

The State of New York is composed of 62 counties which range in citizen population from 2,595,187 (Kings County) to 4,055 (Hamilton County).¹ Citizen population is the constitutional basis of legislative apportionment.² The counties range in area from 22 square miles (New York County) to 2,772 square miles (Saint Lawrence County).³ The state Legislature is composed of a Senate with 58 members, and of an Assembly with 150 members. At this writing, the Senate is composed of 20 Democrats and 38 Republicans, while the Assembly contains 53 Democrats and 95 Republicans with two seats vacant. Of the Democrats in the Senate, all but one are elected from those counties comprising the City of New York, which counties also elect 49 of the Democratic Assemblymen.⁴ As is readily seen,

¹ 1953 LEG. DOC. NO. 98, REPORT, JOINT LEGISLATIVE COMMITTEE ON RE-APPORTIONMENT, MCKINNEY'S SESSION LAWS OF NEW YORK 24, 31-32 (1954). All present day statistics are based on the 1950 federal census. See Appendix to this legislative note for population figures.

² N.Y. CONST. art. 3, § 4.

³ 1954 LEGISLATIVE MANUAL OF NEW YORK 424.

⁴ 1957 N.Y. LEGISLATIVE RECORD AND INDEX 1071, 1072-75.